



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 20, 2015

Jannie L. Quinn
City Attorney
500 Castro Street
Mountain View, CA 94041

Re: Your Request for Advice
Our File No. A-15-049

Dear Ms. Quinn:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Moreover, this letter is based on the facts presented. The Fair Political Practices Commission does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Can Councilmember Lenny Siegel participate in decisions regarding a proposed development project that will change two city-owned surface parking lots to a multi-story hotel where the project site is located 1,640 feet from his residence?

CONCLUSION

Yes. Decisions regarding the development project will not have a reasonably foreseeable material financial effect on Councilmember Siegel’s property.

FACTS

The city council of the City of Mountain View is considering a development project that would combine two city-owned parking lots located across the street from each other in the downtown Historic Retail District into a single, integrated development consisting primarily of a hotel with a modest retail or office component. The parking lots, which provide 149 of the city’s 1,600 downtown off-street public parking spaces, are surrounded by a densely developed area of restaurants, shops, residential properties and a regional transit center for Cal Train and light rail service. The street adjacent to the parking lots serves as a gateway to the downtown area from the Transit Center.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

The project contemplates a signature hotel of at least a three-diamond quality. Under the city's Downtown Precise Plan, the hotel can be no higher than four stories, although the city council can increase the area's building height limits. The Downtown Precise Plan also requires the project to include sufficient parking for the hotel, replace the eliminated parking lots and increase over-all downtown parking spaces where demand has long outpaced supply. To meet this requirement, it is likely that the project will include multi-story underground parking.

The downtown area is made up of distinct areas with different intensities of commercial and residential use. Shops and restaurants are clustered in the Historic Retail District. An old, historic residential area (the "Old Mountain View" neighborhood) consists almost exclusively of owner-occupied single family residences served by small, narrow streets. Councilmember Siegel owns and resides in a single-family home in the Old Mountain View neighborhood. His property is located 1,640 feet from the project site and is separated diagonally from the site by three large city blocks.

Because of the shortage of parking in the downtown core, vehicles are often parked during the lunch and dinner hours on streets in Old Mountain View. Commuters using the Transit Center also use these streets. Streets used for this purpose are generally located closer than Councilmember Siegel's street to the downtown core and the Transit Center.

Councilmember Siegel's home is situated on flat land with existing views limited to the areas surrounding it. From the upstairs of his house, he cannot see a four-story residential building that lies between his house and the proposed hotel, an apartment complex that is at least four stories that lies between his house and the Transit Center or a twelve-story office building that is at a distance similar to that of the hotel.

ANALYSIS

Section 87100 prohibits any state or local public official from making, participating in making, or using his or her official position to influence a government decision in which the official has a financial interest specified in Section 87103. A public official has a "financial interest" in a government decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests. (Section 87103.) Councilmember Siegel has an interest in his real property, which he owns. (Section 87103(b).)

Recently revised Regulation 18702.2(a) provides a list of circumstances under which the reasonably foreseeable financial effect of a governmental decision on real property in which an official has a financial interest is material. As relevant to your facts, the financial effect will be material if the decisions:

"(10) Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality,

including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest.”

“(12) Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property.”

Traffic: Councilmember Siegel’s home is located in the residential “Old Mountain View” neighborhood and is separated diagonally from the site in the commercial area by three large city blocks. This separation and the relatively long distance (1,640 feet) between his property and the project site suggest that it is unlikely that streets in his neighborhood will be used for travel to or from the hotel or other destinations in the downtown area. Thus, it is unlikely that traffic in his neighborhood will be affected.

Intensity of Use: Councilmember Siegel’s neighborhood and surrounding residential areas are built out. Therefore, the development project will not change the intensity of use of these properties. Moreover, the intensity of use in the Historic Retail District is not likely to change significantly because the area is already densely developed with restaurants and shops.

Parking: You indicate that the developer will be required to supplement existing downtown parking which is currently inadequate to meet the needs of the commercial area. This supplemental parking would be in addition to new parking spaces to be used by the hotel and to replace the parking spaces in the two lots. The new parking spaces can be expected to alleviate the need for patrons of the shops and restaurants or commuters using the Transit Center to park on residential streets. However, you indicate that Councilmember Siegel’s street is seldom used for such parking because there are other streets located much closer to the downtown core.

View: Councilmember Siegel’s home is situated on flat land with existing views limited to the areas surrounding it. From the upstairs of his house, he cannot see a four-story residential building that lies between his house and the proposed hotel, an apartment complex that is at least four stories that lies between his house and the Transit Center or a twelve-story office building that is at a distance similar to that of the hotel. Under these facts, it is unlikely that the proposed hotel will significantly affect views from Councilmember Siegel’s property.

Privacy, Noise & Air Quality: The distance between the project and Councilmember Siegel’s property and the density of both the surrounding residential areas and the property surrounding the project site suggest that there will be little or no effect on the privacy, noise or air quality of his property.

Under these facts, it is not reasonably foreseeable that the project will materially impact Councilmember Siegel’s real property by changing its character or having some other impact that

would cause a reasonably prudent person to believe that the value of his property will change. Accordingly, he does not have a conflict to interest in decisions regarding the proposed development.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl